

Jasper Jones, *Esq.* and Frances *his Wife*,

Appellants.

John Bennett, *Gent.* and Mary *his Wife*; Henry Spencer, *Gent.* and Anne *his Wife*; William Wade, Francis Leigh *Esq.* Richard Leigh *an Infant*, Jasper Leigh Jones, Thomas Leigh of Farnham, Thomas Wildman, and Dorothea *his Wife*, Fitz-William Plumtree, Sir Thomas Wynne, and William Fawkes.

Respondents.

A N D

The said Francis Leigh, *Esq.*

Appellant.

The said John Bennett, and Mary *his Wife*; Henry Spencer, and Anne *his Wife*; William Wade, Jasper Jones, and Frances *his Wife*; Jasper Leigh Jones, Richard Leigh *an Infant*, Thomas Leigh of Farnham, Thomas Wildman, and Dorothea *his Wife*; Fitz-William Plumtree, Sir Thomas Wynne, and William Fawkes.

Respondents.

The C A S E of Richard Leigh an Infant, (of about Sixteen Years of Age) Respondent to both Appeals.

SIR John Leigh, late of Addington, in the County of Surry, Knt. deceased, was seised of the Reversion and Inheritance in Fee-Simple, of the Manor of Addington, and several other Lands, Tenements, and Hereditaments, situate in Addington, Croydon, Farley, Chelsham, Katerbam, and elsewhere, in the said County of Surry, and of the Manor of East-Wickbam, and several other Lands in the County of Kent Expectant, and to take Effect in Possession upon the Determination of several Uses, limited and contained in a Settlement of the said Estates made by him, dated the 19th of Dec. 1684, and being so seised, made his last Will and Testament, dated Sept. 2, 1690, whereby he confirmed the said Settlement, and thereby (declaring he had but one Son, and that he was desirous that his Estate of Inheritance might continue in the Name of Leigh, so long as it pleased God :) He devised the Reversion and Inheritance thereof to the Use of (his Brother) Woolley Leigh, for Life, Remainder to the Use of the first, and other Sons of the said Woolley Leigh in Tail-Male, and in Default of such Issue, to the Use of Sir Francis Leigh of Tring, in the County of Hertford (this Respondent's Grandfather) and to the right and lawful Heirs of the said Sir Francis Leigh for ever.

Woolley Leigh died without Issue-Male, and the Testator Sir John Leigh died, leaving Catherine his Widow, and one Son, afterwards Sir John Leigh, and no other Children.

By the Settlement (as it now appears) mentioned and confirmed by the said Will of Sir John Leigh the Father, Part of the Premises were limited to Sir John Leigh the Father for Life, Remainder to Catherine his Lady for Life, Remainder to the first, and other Sons of the said Sir John Leigh, by the said Catherine, Remainder to Sir John Leigh the Father in Fee: and other Part of the Premises were limited to Sir John Leigh the Father for Life, Remainder to the first, and other Sons of that Marriage in Tail-Male, Remainder to Trustees for a Term of Years, to raise Portions, for younger Children, Remainder to Sir John Leigh the Father in Fee.

The Manor of East Wickbam, with the Appurtenances, and all the Premises situate in the County of Kent, are Gavelkind, and descendible according to that Custom in the said County of Kent.

Sir Francis Leigh of Tring, survived Sir John Leigh the Father, and died in the Year 1711, and left Issue Francis Leigh his Son and Heir, who is also dead, and left Issue Francis Leigh, the Respondent, in the first, and Appellant in the second Appeal, and this Respondent, and no other Issue.

Sir John Leigh, the Son, upon the Death of his Father, entered into Possession of such Part of the Premises as were not limited in Jointure to the said Dame Catherine Leigh, and after her Death Sir John Leigh the Son entered into Possession of all the other Premises, and so continued till his Death.

Sir John Leigh the Son, died the 16th Day of Nov. in the Year 1737, without Issue, and upon his Death, if the Remainder in Fee devised as aforesaid to Sir Francis Leigh was not properly barred, the said Francis Leigh, and this Respondent as Coheirs in Gavelkind of the said Sir Francis Leigh, became intitled in Moieties to all such Part of the Premises as were of the Custom of Gavelkind.

After the Death of Sir John Leigh the Son, the Appellants Jasper Jones, and Frances his Wife, and also the said Francis Leigh the Appellant, in the second Appeal, claiming under some Settlement or Will of the said Sir John Leigh the Son entered upon all the Premises, and continued in Possession thereof for some Time.

In

Easter Term 1739.
Bill by Bennett and
Wife, and Spencer
and Wife, the Heirs
at Law.

In Easter Term 1739, the Respondents *John Bennett* and *Mary* his Wife, and *Henry Spencer*, and *Ann* his Wife exhibited their Bill in the Court of Chancery, against the Respondents *William Vade*, *Jasper Leigh Jones*, *Fitz William Plumtree*, *Thomas Wildman*, and *Dorothea* his Wife, *Thomas Leigh*, *John Stalker*, *Sir Thomas Wynne*, *William Fawkes*, this Respondent, and the respective Appellants, *Jasper Jones*, and *Frances* his Wife, and *Francis Leigh* alledging, amongst other Things, That the said *Mary* and *Ann* were the Coheirs of the said *Sir John Leigh*, the Son, and that the said *Sir John Leigh* the Son was of an insane Mind, not knowing or understanding what he did, and that the Respondent *Vade*, and the respective Appellants, or one of them gave Instructions in what Manner the Will and Settlement (pretended to have been made and executed by the said *Sir John Leigh* the Son) were to be made, and gave Directions to the Respondent *Thomas Wildman*, touching the Drawing thereof, or the Disposition of the Estate of the said *Sir John Leigh* the Son, without any Directions or Instructions from him; and that the Recoveries were had and transacted by Fraud, and that he did not understand the Nature and Effect thereof, and therefore prayed (amongst other Things) That the Will and Settlements insisted upon, by the said Defendants might be set aside as obtained by Fraud and Imposition, and that the Defendants might account for the Rents and Profits received by them, and be stayed from committing Waste.

Answers put in to
the said Bill, insisting
on Will of *Sir John*
Leigh the Son.

The Defendants *Francis Leigh*, *Jasper Jones*, and *Frances* his Wife (the now Appellants in the respective Appeals) put in their Answer to the said Bill, and insisted that the said *Sir John Leigh* the Son being of sound Mind, Memory, and Understanding, made his Will in Writing, dated the 30th of Jan. 1736, and thereby devised all his Estates to the Respondent *Fitz William Plumtree*, and *Thomas Wildman* in Trust, to raise so much Money as would be sufficient to pay his Debts, and afterwards, as to one Moiety thereof, to the said *Francis Leigh* (the Appellant in the second Appeal) for Life Remainder to Trustees to preserve contingent Remainders, Remainder to the first, and other Sons of the said *Francis Leigh*, in Tail-Male, Remainder to the Appellant *Frances* in the first Appeal, and the Heirs-Male of her Body, and as to the other Moiety, to the said Appellant *Frances Jones*, and the Heirs Male of her Body, Remainder to the Issue Female of her Body, Remainder to Respondent *Thomas Leigh* of *Farnham*, and the Heirs-Male of his Body; and as to his Estates in the Counties of *Middlesex* and *Kent*, the Testator devised the same to *William Vade* and his Heirs, and made *William Vade* Executor: And they further insisted, by the said Answer, That the said *Sir John Leigh* the Son conveyed all his Estate, by Indentures of Lease and Release of the 9th and 10th of September 1737, to the Use of himself for Life, Remainder to his first, and other Sons in Tail-Male, Remainder to his Daughters in Tail-General, Remainder as to one Moiety of the Premises in the County of *Surry*, (charged as therein mentioned) to the Appellant *Francis Leigh* for Life, Remainder to Trustees to preserve contingent Remainders, Remainder to his first and other Sons in Tail-Male, Remainder to this Respondent for Life, Remainder to his first and other Sons in Tail-Male, Remainder as to the said Moiety, and also as to the other Moiety, (charged as therein mentioned) to the Use of the Appellant *Frances Jones* for Life, Remainder to Trustees, to preserve contingent Remainders, Remainder for a Term of Years, for raising Portions for the younger Children of the Appellant *Frances Jones*, Remainder to the first, and other Sons of the said Appellant *Frances* in Tail-Male, Remainder to her Daughters in Tail, Remainder to *Thomas Leigh* of *Farnham*, and his Heirs. And as to the Premises in *Kent* and *Middlesex*, to the Use of *William Vade* and his Heirs, with a Power of revoking the said Uses with the Consent of the Persons therein named, and also a Power to the Trustees after his Death, to raise so much Money by Sale or Mortgage as would pay all his just Debts. And the said Defendants by their said Answer, insisted on the Benefit of the said Will and Settlement: And the Respondent, being an Infant, did also by his Guardian put in the usual Answer of an Infant to the said Original Bill, and did not mention or insist on his said Right or Title, as one of the Grandsons of the said *Sir Francis Leigh*, the Respondent, his said Right under the said Settlement and Will of the said *Sir John Leigh* the Father, being then unknown.

The Respondent
answered the said Bill
as an Infant and by
Guardian.

Appellants filed a
Cross Bill.

And the Respondent
answered this
Bill, also as an In-
fant and by Guardian.
26th of May 1742.
Order to produce
Deeds, Writings, &c.

The Appellants, in both Appeals, brought their Cross Bill to establish the said Will of the said *Sir John Leigh* the Son, and the said Indentures of Lease and Release of the 9th and 10th Days of September 1737. to which Bill the Respondent also put in the usual Answer of an Infant.

Both the said Causes being at Issue, and divers Witnesses having been examined, the same came on to be heard before the Lord High Chancellor of Great Britain, on the 26th May 1742. When his Lordship was pleased to Order, that the said Causes should stand over to the first Day of Causes in the then next Term; and in the mean time any of the Parties, or their Solicitors were to be at Liberty to inspect all the Deeds and Writings relating to the Matters in Question, in the Custody or Power of any of the Parties, in the Hands of their respective Solicitors, or Clerks in Court; and such of the Deeds and Writings as any of the Parties should give Notice of were to be produced at the farther hearing of the said Causes.

Decree of 28th of
June 1742.

The said Causes came on to be further heard before the Lord High Chancellor, and his Lordship was pleased to declare, that the Deeds of Lease and Release, dated the 9th and 10th of September 1737, were procured from the said *Sir John Leigh* by Fraud, Imposition and Circumvention; and by means of the undue Influence, obtained by the said *Vade*, over the Weakness of *Sir John Leigh*, and that the same ought to be set aside, and decreed the same accordingly; and also that the Cross Bill should stand dismissed with Costs. And in the Original Cause decreed, that the said Deeds should be set aside, and delivered up to be cancelled; and that the said *Jasper Jones*, and *Frances* his Wife, and the other Defendants, should by proper Deeds, Conveyances, and other Assurances in the Law, as the Master to whom the said Causes were referred, should think fit, convey the Manors and Premises in Question to the Plaintiffs *Mary Bennett*, and *Ann Spencer*, the Heirs at Law of the said *Sir John Leigh*, and their Heirs; and that the said *Jasper Jones*, and *Frances* his Wife, and the other Defendants *Vade* and *Francis Leigh*, should deliver the Possession of the said Estates to the said Plaintiffs, and should account for the Rents and Profits thereof, and for the Monies raised by Sale of any Wood or Timber, since the Death of the said *Sir John Leigh*, and should pay one Moiety thereof to the Plaintiffs *Bennet*, and his Wife, and the other Moiety to the Plaintiffs *Spencer*, and his Wife, and that all the Deeds and Writings relating to the said Estates, should be produced before the said Master upon Oath, and deposited with him for the equal Benefit of the said Plaintiffs; and that the said *Jasper Jones*, and *Frances* his Wife, and the other Defendants, should be restrained from receiving any of the Rents and Profits of the Premises, and from cutting down any Wood or Timber from off the same for the future, and the said Decree was to be binding as against this Respondent *Richard Leigh*, and *Jasper Leigh Jones*, the said *Jasper Jones*'s Eldest Son, who were Infants, unless they being served with Subpoenas, to shew Cause against the same, should within six Months, after they should attain their Ages of Twenty One Years, shew good Cause to the contrary, and the said Plaintiffs were quietly to hold and enjoy the Premises against the said Infants in the mean time: But the said Decree was to be without prejudice to any Remedy or Relief, which any of the Creditors of the said *Sir John Leigh*, might hereafter seek by Virtue of the Proviso, in the said Settlement of the 10th of September 1737 for raising Money for the Payment of the said *Sir John Leigh*'s Debts. And it was further Ordered, That the Defendants

Defendants *Vade* and *Wildman*, should pay to the Plaintiffs their Costs of that Suit to that Time, and that the said Plaintiffs should pay to the Defendant *Thomas Leigh*, his Costs of that Suit, and that those Costs should be added to the Plaintiffs own Costs, and be paid to them by the Defendants *Vade* and *Wildman*, and the Consideration of the subsequent Costs, and all further Directions were reserved till after the Master should have made his Report.

That after pronouncing the said Decree (and not before) the Respondents Right, under the said Settlement and Will, made by the said Sir *John Leigh* the Father was discovered.

11th of Dec. 1742,
Petition by the Re-
spondent to the Lord
High Chancellor.

Thereupon the Respondent preferred his Petition to the Lord High Chancellor, setting forth (amongst other Things) That the said Manor, Lands and Premises in *Kent*, are Gavelkind, and that he is one of the Grandsons and Coheirs, according to the Custom of Gavelkind, of the said Sir *Francis Leigh*, and as such intitled to one Moiety of the said Manor, Lands and Premises in the County of *Kent*, by Virtue of the said Settlement of the said 19th Day of *December* 1684, and the said Will of the said Sir *John Leigh* the Father, of the 2d of *September* 1690; And that a proper Defence had not been made in the said Cause on his behalf: And thereby prayed, that this Answer put into the said Original Bill, might be taken off the File, and that he might be at Liberty to put in a New Answer to the said Original Bill, and be at Liberty thereby, to insist on, and put in Issue his said Right, Title and Claim, by Virtue of the last mentioned Settlement and Will of the said Sir *John Leigh* the Father, and such other Matters as he should be advised might be Relevant thereto, or for his Benefit in the said Original Cause, and to examine his Witnesses in support thereof; And that in the mean time all Proceedings on the said Decree, so far as the same might affect the Respondent *Richard Leigh*, or his Interest, might be staid.

22d of Oct. 1742,
Petition by the Ap-
pellant *Francis Leigh*
to rehear the original
Cause.

The Appellant *Francis Leigh*, likewise petitioned the said Lord High Chancellor, representing his New Discovery of the said Will and Settlement of Sir *John Leigh* the Father, and praying that he might be at Liberty to exhibit a New Bill to establish his right under the said Will and Settlement of Sir *John Leigh* the Father, and that the said Original Cause might come on be Re-heard at the same time with the Cause on such New Bill, and that in the mean time Execution upon the Decree as to Conveyances to be executed by the Petitioner might be stayed.

23d of March 1742,
In Petitions heard,
and Order on Re-
spondent's Petition.
Order on Appellant
Francis Leigh's Peti-
tion.

Both the said Petitions came on to be heard together, and on the Petition of this Respondent his Lordship was pleased to order that the Respondent *Leigh* should be at Liberty to amend his Answer to the said Original Bill, or to put in a new Answer thereto as he should be advised; and that he should have time 'till the last Day of the then next Term for that Purpose; and on the Petition of the Appellant *Francis Leigh*, his Lordship was pleased to order, that the Performance of that Part of the said Decree, whereby the said Appellant *Francis Leigh* is decreed to join in a Conveyance of the said *Kentish* Estate, and of so much of the Estate in the County of *Surry* as is comprised in the Deed leading the Uses of the common Recovery suffered by the said Sir *John Leigh* the Son, in *Hillary* Term 1718, of Lands in the County of *Surry*, should be suspended, as to the Appellant *Francis Leigh*, until the Cause should come on again to be heard on the new Defence to be made by the said Respondent *Richard Leigh*, or the said Court of *Chancery* should make other Order to the contrary: And as to all other Matters contained in the said Petition of the said Appellant *Francis Leigh*, his Lordship thereby ordered, that his said Petition should be dismissed.

New Answer put in
by the Respondent.

The Respondent *Richard Leigh*, in Pursuance of the said last mentioned Order, hath put in a new Answer to the said Original Bill in the said Court of *Chancery*, and thereby (amongst other things) has stated the said Settlement and Will of Sir *John Leigh* the Father, and hath insisted on his Right and Title under the same, as one of the Grandsons of the said Sir *Francis Leigh*, in the manner before-mentioned.

Before any Determination of the said Respondent's Right under the said Settlement and Will of Sir *John Leigh* the Father, so put in Issue by the new Answer and Defence of this Respondent to the said Original Bill, the Appellants in the first Appeal have appealed from the said Decree of the 28th of *June* 1742, as to the Particulars therein mentioned; and the said *Francis Leigh*, the Appellant in the second Appeal, has likewise appealed from the said Decree, and also from the Order of the 23d of *March* 1742, so far as the Petition of the said Appellant was thereby directed to be dismissed.

The Respondent is made a Party to both these Appeals, but as neither of the Appellants have appealed against such Part of the said Order of the 23d of *March* 1742, as was made in Favour of and upon the Petition of the Respondent, this Respondent being an Infant humbly hopes his Interest and Right will be protected and taken care of. And if Sir *John Leigh* the Son, should appear to have been of sound Mind, Memory, and Understanding, at the Time of publishing the said Will and executing the said Indentures of Lease or Release, so that his Estates thereby well passed, the Respondent in that Case hopes that such Right or Interest, as he has under the same, will be preserved: But if the said Sir *John Leigh* the Son, should appear to have been not of sound Mind, Memory, and Understanding, at the time aforesaid, as he consequently could not properly bar any of the Remainders under the Settlement and Will of Sir *John Leigh* the Father, so (in such Case) the Respondent humbly hopes that whatever Right he may have under the said Settlement and the Will of Sir *John Leigh* the Father, shall be saved and reserved to the Respondent, and the rather, as this last-mentioned Right of the Respondent has never been under the Consideration of the Court of *Chancery*, or received any judicial Determination.

THOMAS CLARKE.

36.
Jones and his Wife. Appellants.

Bennett and Francis Leigh, } Respondents,
Elq; and others,

A N D

The said Francis Leigh, Appellant.

The said Bennett, and others, Respondents

THE CASE of Richard Leigh, an Infant,
(of about Sixteen Years of Age) Re-
pondent to both Appeals.

To be heard at the Bar of the House of Lords,
on Wednesday the 12th of December, 1744.

